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JAN

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/817,278	04/10/97	HOY	S HOY-00102/03

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IM22/0805

EXAMINER	
DAUERMAN, S	
ART UNIT	PAPER NUMBER

1761

15

DATE MAILED: 08/05/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**Application No.  
**08/817,278**Applicant  
HoyExaminer  
**Sherry Dauerman**Group Art Unit  
**1761** Responsive to communication(s) filed on Jul 22, 1999 This action is **FINAL**. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claims**

Claim(s) 1-10, 13, 18, 19, 22, 24, and 26 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-10, 13, 18, 19, 22, 24, and 26 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

**Application Papers**

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on May 21, 1999 is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

**--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---**

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## **DETAILED ACTION**

### ***Response to Amendment***

In response to the second Amendment dated July 22, 1999, claim 4 has been amended as requested on page 1. Proposed drawing changes previously submitted as part of the previous Amendment dated May 21, 1999 are approved by the examiner. After further consideration of the Remarks in the second Amendment dated July 22, 1999, claims 1-10, 13, 18-19, 22, 24, and 26 continue to be rejected for the same reasons given in the Office Action mailed June 14, 1999. The remainder of this action will focus on responses to specific arguments raised by the applicant in the second Amendment dated July 22, 1999.

### ***Detailed Response***

1. There is no evidence of secondary indica of patentability as referenced on page 2, second paragraph of the second Amendment. Acknowledgment and photocopies of similar products constructed according to the claims of applicant's invention do not in themselves provide evidence of unexpected obvious results or commercial success. Therefore, no convincing evidence in view of the controlling case law, has been submitted and the mere fact that alleged products have been marketed by persons other than the applicant does not overcome the Examiner's position that the claimed invention is obvious to one of ordinary skill in the art.

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2. The Gaines advertisement is valid and not insufficient as suggested on page 3, paragraphs 2-4 of the second Amendment. The publication and date of the advertisement as it appears at the bottom of the advertisement page is, "The Sunday Star Magazine, Washington, D.C., December 4, 1955". Furthermore, the advertisement clearly depicts actual dog biscuits and a commercially available box upon which the same dog biscuits are seen, as opposed to the pictorial illustration of the dogs and cats in the advertisement. However, if the dog biscuits were an illustration rather than an actual photograph, it is noted that a picture of a dog biscuit which has indicia in the form of a message directed towards pet is prior art which shows animal food having indicia on it. Furthermore, there is no requirement that prior art items must be manufactured in order to be considered relevant, only that prior art be enabling. In this case, the Gaines advertisement from the Sunday Star Magazine, meet both the requirements of being enabling and having an acceptable date in order to be considered prior art. A second copy of the above mentioned advertisement has been attached and the publication and date have been circled in red for identification.

3. In view of the amendment to claim 4 which recites a thicker portion "extending along substantially the entire bottom edge" and the discussion referencing a bottom edge support on page 4, paragraph 2, the prior art of item #1516 of the Swiss Colony Gift Catalogue is still considered to teach the obviousness of the claimed limitation. The thick edge of the base and the vertical position of the edible greeting card demonstrate the positioning features as recited in

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claim 4. Furthermore, it is noted that there is a substantially thicker portion along the bottom edge immediately below the figure of Santa Claus.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherry Dauerman at telephone number (703) 305-0883. The examiner can normally be reached on Monday - Friday from 7:00 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703) 308-3535. The fax phone numbers for the organization where this application is assigned are (703) 305-3599 and (703) 305-7718.

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Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

August 2, 1999

**Sherry A. Dauerman**  
**Patent Examiner**  
**Art Unit 1761**



David Lacey  
Supervisory Patent Examiner  
Technology Center 1700

8/3/99